

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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|--------------------------------------|----------|--------------------------------|
| In Re: | § | Chapter 11 |
| | § | |
| W.R. GRACE & CO., et al., | § | Jointly Administered |
| | § | Case No. 01-01139 (JKF) |
| Debtors. | § | |
| | § | |

**FEE AUDITOR'S FINAL REPORT REGARDING
FEE APPLICATION OF ORRICK, HERRINGTON & SUTCLIFFE LLP
FOR THE THIRTIETH INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Fee Application of Orrick, Herrington & Sutcliffe LLP for the Thirtieth Interim Period (the “Application”).

BACKGROUND

1. Orrick, Herrington & Sutcliffe LLP (“Orrick”) was retained as bankruptcy counsel to David T. Austern, future claimants’ representative. In the Application, Orrick seeks approval of fees totaling \$1,205,058.75 and expenses totaling \$69,698.64 for its services from July 1, 2008 through September 30, 2008 (the “Application Period”).

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2008, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330, Issued

January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Orrick, and received a response from Orrick, portions of which response are quoted herein.

DISCUSSION

General Issues

3. In our initial report, we noted that although Orrick had requested total fees of \$1,205,058.75 in its quarterly Application, the fees billed in Orrick's monthly applications totaled only \$1,200,408.75, for a difference of \$4,650.00. Thus, we asked Orrick to explain this discrepancy. Orrick responded as follows:

You correctly note that there is a \$4,650.00 discrepancy between the invoice submitted with our July 2008 fee application and the amount set out in the text of our fee applications. The July 2008 invoice is incorrect.

. . . After issuing that invoice, we discovered that a single time entry – 6.0 hours that Richard V. Smith worked on Grace plan issues at \$775/hour on July 31, 2008 – had been misbilled to another client. We corrected that misbilling, and on September 11, 2008, we issued a corrected invoice for July 2008, showing total fees billed to matter 9 of \$309,894.50. A copy of the corrected invoice is enclosed . . .

When we prepared our July 2008 monthly fee application, we included the data reflected in the corrected invoice (total fees billed to matter 9 of \$309,894.50), but when we filed our July 2008 monthly fee application, we attached the original invoice for that month, by mistake. . .

We accept Orrick's response and have no objection to these fees.

4. We noted that although Orrick had requested total expenses of \$69,698.64 for the Application Period, we calculated Orrick's total expenses at \$69,589.08, for a difference of \$109.56.

We were advised by Orrick that the discrepancy of \$109.56 was due to a clerical error. In response to our inquiry, Orrick agreed to reduce its expense request by \$109.56 to correct the error. We appreciate Orrick's response and recommend a reduction of \$109.56 in expenses.

Specific Time and Expense Entries

5. In our initial report, we noted the following air fare charges for which more information was needed:

| <u>Person</u> | <u>Date</u> | <u>Expense Type</u> | <u>Location</u> | <u>Round Trip</u> | <u>Total</u> |
|---------------|-----------------|---------------------|---------------------|-------------------|---------------------|
| Debra Felder | 6/25/2008 | Air | DC to NY | Yes | 627.62 |
| Roger Frankel | 6/24/08-6/27/08 | Air | DC to NY | Yes | 689.00 |
| Roger Frankel | 7/29/2008 | Air | Washington DC to NY | Yes | 679.00 |
| Roger Frankel | 8/5/08-8/7/08 | Air | DC to NY | Yes | 367.00 ¹ |
| Richard Smith | 8/6/08-8/8/08 | Air | San Francisco to NY | Yes | 1,159.00 |
| Richard Smith | 8/25/08 | Air | San Francisco to NY | Yes | 3,208.30 |

Orrick provided the following response concerning these charges: "Attached hereto please find copies of receipts for each of the air travel expenses as requested and set forth in the Report. None of these air fares were booked as first class flights." Orrick subsequently advised that all of the flights were "economy/standard class flights." And with regard to the \$3,208.30 charge for Mr. Smith's round trip from San Francisco to New York, Orrick provided the following additional information:

I have double-checked the air travel expense by Richard Smith dated 8/25/08 in the amount of \$3,208.30. This expense is one that, since we did not have a copy of actual ticket, I had called the airline to confirm what Class ZU meant (as shown on the

¹We note that only one-half of this charge was billed to the W.R. Grace estate.

AmEx receipt) and was told that it is an economy/standard/coach class.

The increased cost may have been due to the time and day when flying or late booking, though I am not certain.

Based upon Orrick's representation that all of the flights were economy class flights, we accept Orrick's response and have no objection to these expenses.

CONCLUSION

6. Thus, we recommend approval of \$1,205,058.75 in fees and \$69,589.08 in expenses (\$69,698.64 minus \$109.56) for Orrick's services for the Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

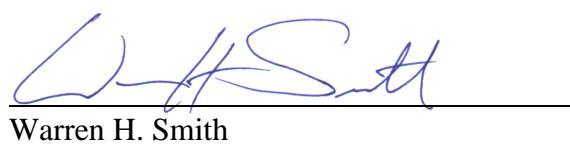
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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 23rd day of March, 2009.



Warren H. Smith

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